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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------|------------------|
| 10/786,180 | 02/25/2004 | Roger W. Meads | MEADS-08913 | 2384 |
| 7590 | 01/04/2007 | | EXAMINER | |
| J. Mitchell Jones MEDLEN & CARROLL, LLP 101 Howard Street, Suite 350 San Francisco, CA 94105 | | | VERBITSKY, GAIL KAPLAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2859 | |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | |
|------------------------------|-----------------|--------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/786,180 | MEADS ET AL. |
| | Examiner | Art Unit |
| | Gail Verbitsky | 2859 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 07 November 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103 that form the basis for the rejections under this section made in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4, 6, 9, 11-14, 16, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy et al. (U.S. 5203345) and Casscells, III et al. (U.S. 6821249) [hereinafter Casscells].

Kennedy discloses in Fig. 1 a remote telemetry system/ method comprising an implantable temperature sensing device (transmitter) implanted in vagina of a (dairy) cow (col. 3, line 27) to determine an estrus temperature of the cow, a signal receiver /receiving antenna and a digital computer, inherently, acting as a processor and a digital access device, each temperature sensing device comprises an identification signal to indicate the cow identity and its temperature (col. 3, lines 8-13). This would imply that there is a means/ device in the implanted transmitter or that used for identification or location. Also, the fact that Kennedy discloses the identification signal/ code/ number would suggest that the there is an identification device bearing/ storing the identification code.

For claim 9: Thus, it is inherent, that the computer comprises an animal identification device, which receives the identification signal from the transmitter and issues a signal identifying/ recognizable/ detectable by the operator (i.e., identification code, temperature).

For claim 6: Thus, it is inherent, that the computer comprises an animal identification device, which wirelessly receives the identification signal from the transmitter and issues an identifying signal recognizable to the operator according to its program/ wireless protocol.

For claim 12: Kennedy states that the cows are being monitored continuously (over extended time) to determine the estrus, and thus, fluctuation (increase) from a normal, temperature, and the signals are received and decoded using programs (col. 6, lines 36-52), inherently, recognizing the estrus and, inherently, notifying the operator. It is also, inherent, that the temperature fluctuation/increase is compared with a normal cow temperature. The method steps will be met during the normal operation of the device stated above.

It is inherent, that, if the device identifies a cow, then this information becomes available to an operator one way or another, i.e., as visual, auditory or visual/ auditory signal, so as to correlate the temperature to the particular cow.

Kennedy does not explicitly teach that the processing device sends messages to the implantable device, as stated in claims 1, 12, 20.

Casscells discloses a device wherein a temperature implant is implanted in a body of a mammal (patient), and a remotely located processor not only receive a temperature data from the implantable device, but also operable to wirelessly interrogate the implantable device by sensing to it messages.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Kennedy, so as to allow the processor not only to receive the data from the device, but also to interrogate it when necessary, so as to, for example, to change the frequency and duration of measuring temperature during the day.

3. Claims 1-3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al. (U.S. 4865044) [hereinafter Wallace] in view of Casscells.

Wallace discloses a system comprising an implantable (implant) in a cow ear temperature sensing device (transmitter) comprising an identification number generated/ processed by an encoder (processor) to be transmitted along with a temperature sensed, a signal receiver comprises a decoder (device receiving a bit rate/ digital access device from the transmitter, and means (identification device) comprising identification code (col. 2, lines 35-46), thus, means in the implanted transmitter that used for identification or location. Also, the fact that Wallace discloses the identification code/ number would suggest that the there is an identification device bearing/ storing the identification code/ number, and that the information should become available to an operator one way or another, i.e., as visual, auditory or visual/ auditory signal, so as to correlate the temperature to the particular cow.

Wallace does not explicitly teach that the processing device sends messages to the implantable device, as stated in claims 1, 12, 20.

Casscells discloses a device wherein a temperature implant is implanted in a body of a mammal (patient), and a remotely located processor not only receive a temperature data from the implantable device, but also operable to wirelessly interrogate the implantable device by sensing to it messages.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Wallace, so as to allow the processor not only to receive the data from the device, but also to interrogate it when necessary, so as to, for example, to change the frequency and duration of measuring temperature during the day.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy and Casscells as applied to claims 1-2, 4, 6, 9, 11-14, 16, 18-20 above, and further in view of the Prior Art by Kennedy [hereinafter Prior art].

Kennedy and Casscells disclose the device/ method as stated above in paragraph 2.

They do not state that the receiving device is positioned in a milking parlor.

Prior art states that the receiving device (monitoring station) could be positioned in a milking (parlor) (col. 6, line 48).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Kennedy and Casscells, so as to position the receiver in a milking parlor, as taught by the Prior art, so as to minimize unnecessary transmission, and thus, manufacturing costs, especially, if it is known that the cows of interest are located close/ in the milking parlor.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace and Casscells as applied to claims 1-3 and 20 above, and further in view of Stafford et al. (U.S. 5482008).

Wallace and Casscells disclose the system/ method as stated above in paragraph 3.

They do not explicitly teach a microchip comprising an ID number, as stated in claim 8.

Stafford discloses a device in the field of applicant's endeavor comprising a system having a temperature-sensing device (microchip) 32 and a microchip code circuit (identification device) 5.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace, and Casscells so as to

have a microchip comprising (responsible for) the ID number, as taught by Stafford, so as to minimize the dimensions of the device, and simplify its control, as very well known in the art.

6. Claims 7, 14-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy and Casscells, as applied to claims 1-2, 4, 6, 9, 11-14, 16, 18-20 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Kennedy and Casscells disclose the system/ method as stated above in paragraph 2.

They do not explicitly teach the limitations of claims 7, 14-15 and 17.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and digital access device being a PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Kennedy and Casscells, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Kennedy and Casscells, so as to use PDA wireless communication device, as taught by Han, in order to transmit data and determine a patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

7. Claims 6-7, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace and Casscells, as applied to claims 1-3 and 20 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Wallace and Casscells disclose the system/ method as stated above in paragraph 3.

They do not explicitly teach the limitations of claims 6-7, 15 and 17.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace and Casscells, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace and Casscells, so as to use PDA wireless communication device, as taught by Han, in order to transmit data and determine a patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

The method steps will be met during the normal operation of the device stated above.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy and Casscells as applied to claims 1-2, 4, 6, 9, 11-14, 16, 18-20 above, and further in view of Hamel et al. (U.S. 6622567) [hereinafter Hamel].

Kennedy and Casscells disclose the system/ method as stated above in paragraph 2.

They do not explicitly disclose that the transmission is a RFID transmission of claim 5.

Hamel discloses a device wherein the information has been transmitted using a RFID chip.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Kennedy and Casscells, so as to use RFID wireless communication device, as taught by Han, because both of this method are using wireless communication by means of radio frequency, as well known in the art, and because both of them are alternate types of the transmission means which will perform the same function, if one is replaced with the other.

Response to Arguments

9. Applicant's arguments filed on November 07, 2006 have been fully considered but they are not persuasive.

Applicant states that Kennedy does not teach two-way communication (or that the processing device sends messages to the identification device). This argument is now moot in view of new ground of rejection.

With respect to Kennedy: Applicant states that Kennedy does not teach an identification device fixable to the animal. This argument is not persuasive: Kennedy states that the radio transmitter implanted/ inserted/ fixable into the cow body transmits a unique radio signal, which indicates the cow identity and temperature (col. 2, lines 58-68 and col. 3, lines 8-15). Therefore, the radio transmitter can be considered as both, the ID device and the temperature device. It is inherent, that being able to identify the cow; the device is being able to identify it among the herd.

With respect to Wallace: Applicant states that Wallace does not teach two-way communication. This argument is now moot in view of new ground of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free),

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800

December 11, 2006